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[ORIGINAL CIVIL JURISDICTION]
HORNE, J.

IN RE THE WILL OF MANCHERJEE PALLONJEE.

[SINGAPORE ORIGINATING SUMMONS No. 152 of 1937]

Will—Construction—Trust for residence in family house—Sale of house—Whether objects of the trust entitled to benefit of proceeds of sale or subsequent interests accelerated—Settled Estates Ordinance (Cap. 52), s. 4, sub-s. 2.

The testator who died in 1931, by his Will dated the 13th January 1927 bequeathed under clause 4 thereof a house to his trustees upon trust "to permit all my relations that are living therein at my death to remain living therein rent free until the expiration of 21 years from my death (hereinafter referred to as the period of distribution) and after such period upon trust to convey the said house to my grand-nephew Eddie Polo and to any other son or sons of the said Wee Giang Tye who are living at my death as tenants in common in equal shares."

He also directed his trustees under clause 8 thereof to apply the income from his residuary estate for the benefit of his relatives living in the said house for the period of distribution by paying the assessment rates repairs and general household expenses thereof.

The income of the testator's residuary estate having proved insufficient for the maintenance and upkeep of the house and its occupants, the house was sold under an order of Court made in the originating summons on the 29th December 1937 upon the application of the trustees, one of whom was a relation entitled to reside in the house under the terms of the will, and the proceeds of sale were lodged in Court.

There were several persons who were entitled as relations to live in the house, and Eddie Polo, who was still an infant was the only son of Wee Giang Tye living at the testator's death.

Held, that the will did not create anything analogous to a life estate or a tenancy and that all the testator's relations were entitled to was 21 years rent free residence and if the residuary income was available, the house and the occupants were to be maintained thereout. The house having been sold the proceeds of sale pass to the remainderman Eddie Polo.

ADJOURNED ORIGINATING SUMMONS for determination of certain questions arising upon construction of the will of M. Pallonjee deceased, made upon the application of the trustees of the will for the directions of the Court.

Dr. C. H. Withers-Payne for the trustees, was appointed by the Court to represent for the purposes of the application, the testator's relations entitled to live in the house.

E. R. Koek for Eddie Polo, contended (a) that the will gave the testator's relations a mere licence to occupy the house: *Lim Mah Yong* v. *Anthony*, 1 Ky. 475; (b) that when personal occupation became impossible on sale of the house, the trust failed and the relations were not in the position of tenants for life and had no interest in the proceeds of sale; *In re Anderson*, (1920) 1 Ch. 175; and (c) that the failure of the preceding limitation accelerated the gift to Eddie Polo, who was therefore solely entitled to the proceeds of sale; *Jull* v. *Jacobs* 3 Ch.D. 703.

Dr. Withers-Payne, for the testator's relations entitled to live in the house contended that the sale of the house was in exercise of the jurisdiction conferred by the Settled Estates Ordinance (Cap. 52); that s. 4, sub-s. 2 of that Ordinance applied to the proceeds of sale, the income of which was accordingly payable to the relations until the period of distribution. He cited *inter alia*. *Re Paget's Settled Estates*, 30 Ch.D. 161; *Re Edwards Settlement*, (1897) 2 Ch. 412; *Re Carnes' Settled Estates*, (1899) 1 Ch. D. 324.

Cur. Ad. Vult.

HORNE, J.—Mancherjee Pallonjee deceased, after giving pecuniary legacies, bequeathed a freehold house No. 228 Orchard Road to his trustees upon trust to permit all his relations living therein at his death to remain living therein until the expiration of twenty one years from his death (the period of distribution) and after such period upon trust to convey the said house to his grand nephew Eddie Polo. He also gave his other property, not specifically disposed of, upon trust to his trustees to convert the same (the residuary estate) and after payment of the legacies to apply the income for the benefit of his relatives living in the house 228, Orchard Road, for the period of distribution in the following manner:—

"(a) To pay all assessments on my said house.

"(b) To pay for all necessary repairs in the absolute discretion of the trustees.

"(c) To pay for the general household expenses of his said house including food for such of my relatives who are living there at the time of my death."

and after the period of distribution to convey the residuary estate to Eddie Polo.

The Testator died in 1931. The relatives continued living in the house.

Two of the Testator's sisters have subsequently died, and, when the house was sold by Order of the Court, there were living therein one of the trustees, Bomanjee Pallonjee, who is a brother of the deceased; Tan Swee Wah, an adopted son of the deceased; Khoo Tong Tye and his wife Tan Jee Neo, the latter being an adopted daughter of the mother of the deceased.

I have to decide what directions should be given as to the investment of the net proceeds of the sale. That is how the matter was put in the Originating Summons at first. A further Summons-in-Chambers has, however, put the

matter more definitely viz: whether the net proceeds of the sale of the house should be invested and the income paid during the period of distribution to the persons who would have been entitled to live in the said house or whether it should be held on trust for Eddie Polo. The period of distribution will expire in 1952. Eddie Polo is now 19 years of age.

Dr. Withers-Payne, for the survivors of the six relations, who were living in the house at that date, contends that, by virtue of the Settled Estates Ordinance (Cap. 52) the relatives are entitled to the income from the invested proceeds of sale for the balance of the 21 years. The will, he submits is a settlement within the meaning of the Ordinance and that by continuing to live in the house the relatives are in much the same position as a statutory tenant for life under the English Settled Land Acts. Even if they are not there, to give them this income will be to give effect to the intention of the settlor, the testator.

It is admitted that during the whole of the period since the testator's death there have been insufficient funds for the purpose of maintaining the house. Can it therefore be said that there was any reason to believe that the intention of the testator that the house should be maintained by the estate could ever be carried into effect? The affidavit of B. Pallonjee and Wee Giang Tye sworn on the 8th/13th November 1937 shows that there have been difficulties in realizing the estate and the inference is that these two trustees have never been able to maintain the house out of the residuary income. The pecuniary legacies amounted to $13,000, of this sum $5,676-30 is unpaid; and the only present assets are the two mortgages which may or may not realise the amount of the loans viz: $7,500. In addition to the $5,676-30 B. Pallonjee has a claim against the estate in account for expenditure on the said house amounting to $2,262-77.

It seems almost as if from the very beginning of their trusteeship the trustees could not give effect to the trust to permit the relations to remain living in the house.

Mr. Koek's argument was to the effect that all the relatives have is a licence to occupy and not a right of property, not an estate or interest. Under clause 4 of the will a term of 21 years is created, the trustees hold the property and have the legal estate for that period and they are bound to allow the relatives to remain living there, if they so desire, rent free. Obviously it has not become worth while for the relatives to do so, because there is no residuary income available to maintain the property. Accordingly the relatives having abandoned their right of beneficial occupation for the term of 21 years and there being no other intervening interest the trust in their favour goes and the interest of Eddlie Polo is accelerated.

As I read the will the relatives have a right of occupancy for twenty-one years. There is no gift for life. It is neither a gift to them so long as they shall dwell in the house, nor a gift confined to an uncertain period included in the party's life. It is a fixed term of 21 years interposed before the absolute gift to Eddlie Polo is to take effect. They have an option which they can exercise and even if this option fell to be considered under the English Settled Land Acts its exercise would not make the relatives statutory tenants for life within any of the definitions in the 1882 Act, because the gift is not made dependent in any way upon any life.

But here all the Court is concerned with is the intention of the testator both apart from the Settled Estates Ordinance and also because of section 4 (2) thereof which requires that the net proceeds of the sale shall be dealt with by the Court in the manner "best calculated to carry out the intention of the settlor, and, subject thereto, with due regard to the interest of those intended to be benefited by the settlement." Taking the relatives as those intended to be benefited by the settlement, nevertheless, their beneficial interest is an option which they are capable of exercising or abandoning. (*May* v. *May*, 44 L.T. 412 and *In re Anderson* (1920) 1 Ch. 175). There is nothing analogous to a life estate or a tenancy. The trustees are the tenants. It appears to me that the relatives in asking for the interest on the net proceeds are asking for something more than the settlor ever intended them to have. The settlor has given them 21 years rent free residence, and, if the residuary income is available, the house and the occupants are to be maintained. In the absence of the benefit under clause 8 the relatives could have remained in residence at their own risk under clause 4. But they would not be allowed to depreciate the subsequent interest of Eddie Polo for that would be contrary to the settlor's intention.

The matter therefore appears to me to be a case where the gift has failed and the principle of *Jull* v. *Jacobs* (1878) 3 Ch. 703 has to be applied. It was never the intention of the testator that the house should have become wasted away by the end of the 21 years. As matters stand much less will come to Eddie Polo than the testator intended by his will. For not only did he intend him eventually to have the house but also the residuary estate, which however has vanished into the thin air.

The relatives by their claim must be taken to have renounced or abandoned their right to live rent free, and consequently being in the capacity of devisees who are incapable of taking the gift, the house must pass to the remainderman. The sale is for the convenience of all parties for in the absence of any residuary income

the relatives do not wish to be burdened with the devise of a rent free house. Accordingly I direct that the net proceeds will be invested in the names of the consenting trustees to hold same on trust for Eddie Polo.

Order accordingly.

Solicitors for the trustees (applicants) *Drew & Napier.*

Solicitors for Eddie Polo (respondent)— *Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION]

PEDLOW, J.

November 3, 1938.

IN RE CHUA YAN KENG'S TRUSTS. CHUA LIP KEE

v.

CHUA LIP CHEE AND OTHERS.

[MALACCA ORIGINATING SUMMONS No. 6 of 1937 CONSOLIDATED With No. 17 of 1905]

Receiver—Remuneration—Costs charges and expenses.

A receiver who is remunerated a percentage of his collection is not entitled to charge in addition to such remuneration sums paid by him for clerical assistance, salary of a bill collector, office expenses, stationery or lighting, though in a proper case the Court might approve of a salary to a rent collector.

REFERENCE FROM REGISTRAR.

John Laycock for defendants, the trustees.
S. C. Gono for Chua Lip Giap.
W. F. S. Zehnder for Chua Siow Liat.
D. N. Bannerjea for Chua Poh Choo.
F. R. Massey for Chua Lip Kee.

Cur. Adv. Vult.

PEDLOW, J.—This was a reference to the Court under O. 51, r. 20 by the Registrar for a decision on principle and, if necessary, on quantum as to the falsification of account No. 210 in the estate of Chua Yan Keng deceased, originating summons No. 6 of 1937 and No. 17 of 1905.

The main point at issue was whether a receiver appointed by the Court on a percentage of receipts basis of remuneration was entitled to debit the estate with the cost of keeping the accounts, of a bill collector, of a proportion of the lighting of his office, of the cost of stationery and of certain other minor charges.

The learned Registrar took the view that such charges could and should be allowed and in this he is fortified by the fact that such charges have been allowed in this case in the past by this Court for the last 22 years. I have been trying, however, to find any local authority for that practice but I have failed to do so. Were the practice correct it would mean, if pushed to its logical conclusion, that a man who undertook a receivership from the Court could then employ a firm of professional receivers such as Estate & Trust Agencies to do all the work for him, charge their commission as expenses and put in his own pocket the entire percentage allowed him by the Court without having himself to do anything more than sign his name to documents supplied by his sub-agent.

The amount allowed by the Court in the present instance is 5%. The accounts show that the actual amount debited to the estate is just about 18%. Looking at things from general principles one would think that in return for this remuneration of 5% a receiver should at least collect the rents of the estate. I find it difficult to find any explicit authority in the matter. I was referred to two cases, both unreported decided in Singapore, and both of which are against the view of the learned Registrar. Those cases were the *Sultan of Siak's case* and Singapore Suit No. 1068 of 1932. Text books are not very helpful so far as detailed illustrations go. There is a phrase which occurs in both Woodroffe and in Kerr which is that a receiver is entitled to his costs, charges and expenses properly incurred in the discharge of his duties. In my opinion those costs, charges and expenses are not the costs, charges and expenses of getting in the rents and profits. So far as can be made out "the costs" there are legal costs properly incurred, and "charges and expenses" seem to refer to outgoings on the upkeep of the estate, repairs to houses and so on. There is an Indian case which is some authority for the proposition that in suitable cases the expenses of a clerk may be allowed, but it seems equally clear from that case that the clerk may not be allowed unless the Court has specially authorised it. There was no such authority here unless it may be said that there was implied authority in the fact that the accounts were passed in this form for so many years, but I do not think that it is the correct view to take of the matter that there was any implied authority. It would seem to be the custom at any rate that the receiver's remuneration is not fixed until he has filed his first accounts and they have been passed. He is apparently debarred at law from receiving any remuneration until this has been done. It is not unreasonable to think that the basis of that procedure is that the Court may see what amount of work is really involved before it finally determines what the amount of a percentage or other basis of remuneration should be.